

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND

CHAMBERS OF  
J. FREDERICK MOTZ  
UNITED STATES DISTRICT JUDGE

101 WEST LOMBARD STREET  
BALTIMORE, MARYLAND 21201  
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August 28, 2015

MEMO TO COUNSEL RE: Malibu Media, LLC v. John Doe  
Civil No. JFM-14-758

Dear Counsel:

I have reviewed the memoranda submitted in connection with plaintiff's motion to dismiss defendant's counterclaim and its motion to strike defendant's affirmative defenses. Both motions (documents 43 and 44) are denied. It appears to me that many of the affirmative defenses and many of the claims asserted in the counterclaim are exceedingly weak. Moreover, the facts stated in support of the counterclaims and affirmative defenses are exceedingly unspecific even under pre-*Twombly* standards.

Maintaining the affirmative defenses and continuing to pursue the counterclaims may subject defendant to Rule 11 sanctions. It is no defense for defendant to contend that he needs discovery to establish whatever facts may support the defenses and counterclaims. He must, in the first instance, have a good faith basis for his assertion of them. Nevertheless, that is a matter for defendant and his counsel to decide. I do not want to have the litigation delayed by my writing an extensive opinion on issues raised solely by the pleadings.

A conference call will be held on September 10, 2015 at 4:45 p.m. to discuss the appropriate schedule in this case. I ask counsel for plaintiff to initiate the call.

Enclosed is a tentative scheduling order with approximate dates for your information. Please consult with one another before the call and be prepared to discuss whether you would like to participate in a settlement conference either before or after the completion of discovery, any changes to the dates in the form scheduling order, and whether there is unanimous consent to proceed before a U.S. Magistrate Judge for all proceedings.

Also enclosed is a letter regarding a call-in hour program for the resolution of discovery disagreements.

Despite the informal nature of this letter, it should be flagged as an opinion and docketed as an order.

Very truly yours,

/s/

J. Frederick Motz  
United States District Judge